TXD-(SF)-46-70
San Diego, Calif.
April 6, 1970

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF TRIAL EXAMINERS
BRANCH OFFICE
SAN FRANCISCO, CALIFORNIA

GEORGE M. HART dba SAN DIEGO CABINETS	Case No. 21-CA-8828-1
D&G CABINETS, INC.	Case No. 21-CA-8828-2
ALLAN M. HOMES AND CHARLES A. HOMES, dba A.M. HOMES PRE-HUNG DOORS; and HOMES & SONS	Case No. 21-CA-8828-3
THOMPSON CABINETS, INC.	Case No. 21-CA-8828-4
CROSS CABINET & DOOR COMPANY	Case No. 21-CA-8828-5
RONALD H. SANDOVAL dba RONDELL CABINET MFG.	Case No. 21-CA-8828-6
HARRY B. PARKINSON dba PARKINSON CABINET SHOP	Case No. 21-CA-8828=7
KITCHEN CABINETS, INC.[1]	Case No. 21-CA-8861

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[1] The Respondents hereafter shall be designated as follows: George M. Hart, dba San Diego Cabinets, as Hart; D&G
(continued)

and

CARPENTERS' LOCAL UNION NO. 2020
OF THE UNITED BROTHERHOOD OF
CARPENTERS AND JOINERS OF AMERICA,
AFL-CIO[2]

Ben Grodsky, for the General Counsel.
Richard D. Prochazka of Brundage,
Williams & Zellman of San Diego,
Calif., for the Charging Party.
Richard Fenton of Los Angeles, Calif.
for Respondents Hart, D&G, Thompson,
Rondell, Parkinson & Kitchen Cabinets.

1/ (continued)

D&G Cabinets, Inc., as D&G; Thompson Cabinets, Inc., as Thompson; Cross Cabinets & Door Co., as Cross; Ronald H. Sandoval, dba Rondell Cabinet Mfg., as Rondell; Harry B. Parkinson, dba Parkinson Cabinet Shop, as Parkinson; Kitchen Cabinets, Inc., as KC. One of the issues in the proceedings is whether Allan M. Homes, dba A.M. Homes Pre-hung Doors and Charles A. Homes, dba Homes & Sons, should be treated as one employer, as contended by the General Counsel, or as separate entities, as contended by Mr. McGrath. For this reason, the former shall be designated as A.M. and the latter as C.A. Homes where the Examiner finds it necessary to distinguish them in this decision.

2/ Hereafter Local 2020.

Robert E. Andreen of Kaminar, Sorbo, Andreen & Thorn of San Diego, Calif., for Respondent Cross.
William L. McGrath of Kaminar, Sorbo, Andreen & Thorn of San Diego, Calif., for Respondent Homes.

TRIAL EXAMINER'S DECISION

Statement of the Case

GEORGE CHRISTENSEN, Trial Examiner: On December 16 and 17, 1969[3/] the Examiner conducted a hearing at San Diego, California to try issues raised by Complaints[4/] alleging that the Respondents have refused to bargain in good faith with Local 2020 since August 2 and have thereby violated Section 8(a)(5) and (1) of the National Labor Relations Act, as amended (Act). Separate charges were filed by Local 2020 against KC on October 21 and against the balance of the Respondents on October 6.

3/ Add 1969 to any further date references where the year is omitted.

4/ All the cases were consolidated for purposes of hearing and decision on November 17 inasmuch as issues common to all were involved and to be litigated, and to save unnecessary cost and delay.

All Respondents filed Answers admitting proper service of the charges upon them, that each at all times pertinent was engaged in the San Diego area, that each annually purchases and receives goods, materials and supplies valued in excess of $50,000 from suppliers within the State of California who receive such goods, materials and supplies directly from points outside the State of California, that each at all times pertinent was an employer engaged in commerce and in a business affecting commerce within the meaning of the Act, and that a unit consisting of production and maintenance employees of each Respondent, including journeymen millmen and cabinet makers, journeymen finishers, spray gun operators and mill and shop helpers, excluding office clerical employees, guards, professional employees and supervisors as defined in the Act, constitutes an appropriate unit as to each Respondent for the purpose of bargaining collectively with respect to the rates of pay, wages, hours and other conditions of employment of the employees of each Respondent within such unit.

All the Respondents contend that no

violation of the Act occurred because prior to the time each of their contracts with Local 2020 expired they joined an employer association which was party to a 1968-71 agreement with a conference of unions including Local 2020, thereby merging that Association and their separate bargaining units into a multi-employer bargaining unit encompassed by that agreement. Cross alleges an added and separate defense that at no time pertinent did it refuse to bargain with Local 2020 but on the contrary expressed its willingness to bargain at any mutually convenient date. C.A. Homes alleges an added and separate defense that at no time was it under any obligation to bargain with Local 2020.

The basic issue is whether by such association affiliation the Respondents were relieved of an obligation to bargain individually with Local 2020 concerning the rates of pay, wages, hours and other working conditions of their employees within the units heretofore specified. Added issues arise as to whether, assuming a duty on the part of Cross to bargain individually with Local 2020, it satisfied that duty and

whether C.A. Homes at any time had any duty to bargain with Local 2020.

The General Counsel, the Charging Party and all the Respondents appeared by counsel at the hearing and were afforded full opportunity to introduce evidence, to examine and cross-examine witnesses, to argue orally and to file briefs. Counsel for the General Counsel, the Charging Party, Respondents Cross and Homes filed briefs.

Based upon his review of the entire record, observation of the witnesses, perusal of the briefs and research, the Examiner enters the following:

Findings of Fact[2/]

I. Jurisdiction

The essential facts (related above) necessary to establish the Board's jurisdiction over the Respondents in this case were alleged in the Complaints and admitted

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5/ The findings in this case are based upon the stipulations of the parties and the uncontradicted testimony offered during the hearing; Respondents did not adduce any testimony.

in the Answers. The Examiner therefore finds and concludes that the Respondents were employers engaged in commerce and in a business affecting commerce within the meaning of the Act at all times pertinent to this proceeding.

II. Labor Organization

M. N. Long, Financial Secretary of Local 2020, testified without contradiction that Local 2020 exists primarily for the purpose of bargaining collectively on behalf of its members with their employers concerning their wages, hours and working conditions. It has petitioned the Board for certification as the exclusive representative of its members for that purpose, participated in Board elections, and has been so certified. It has negotiated and executed several collective bargaining agreements with employers of its members concerning their wages, hours and working conditions. The examiner therefore and concludes that Local 2020 was a labor organization within the meaning of the Act at all times pertinent.

III. The Unfair Labor Practices

A. Bargaining History

Historically Local 2020 and the employers of its members negotiate the rates of pay, wages, hours and other working conditions for the carpenters within Local 2020's geographic and trade jurisdiction by local bargaining. For some 10 years, at least, the area pattern has been established by negotiation of a collective bargaining agreement between Local 2020 and the San Diego Lumbermen's Association (S.D. Assn.), followed by separate, independent negotiations of agreements containing basically the same terms between Local 2020 and the employers of Local 2020's members who were not members of the Association, (the independents). These agreements, while separately and independently negotiated on a single employer basis, were tailored to specific segments of the industry within the area (the Mill & Cabinet; the Stock Mill; etc.).

The last round of negotiations preceding those which precipitated this dispute occurred in 1966. In accord with previous

practice, Local 2020 and the S.D. Assn. negotiated a 3-year contract expiring on July 31.

None of the Respondents were members of the S.D. Assn. at the time. Seven of the nine Respondents (Cross, D&G, Hart, A.M. Homes, KC, Parkinson and Thompson) and some 50 other employers in the San Diego area subsequently negotiated and executed separate and individual contracts for the same term with Local 2020. A.M. Homes and Local 2020 executed a "Stock Mill" Agreement and the other six executed "Mill & Cabinet" Agreements. Rondell was signatory to a Mill & Cabinet Agreement with Local 2020 for the term ending July 30, 1966 but did not execute a new contract for the 1966-69 term. Rondell did, however, comply with all the terms and conditions of the latter contract during its term. C.A. Homes and Local 2020 executed a Mill and Cabinet Agreement some time prior to 1969, but did not sign a 1966-69 contract. Local 2020's members worked for C.A. Homes and Rondell through the 1966-69 term of Local 2020's agreements with the other seven and thereafter, were serviced by Local 2020's representatives,

and were compensated in accordance with the terms of said agreements. Local 2020 members worked at the premises of C.A. Homes and were directly supervised in their work performance by C.A. Homes at all times since 1966. C.A. Homes' business at all times pertinent was conducted in a building immediately adjacent to that of A.M. Homes.

B. The 1969 Negotiations

Pursuant to the duration provision of the respective contracts, on May 29 Local 2020 served written notices upon the S.D. Assn. and each of the 50 or more independents, including Cross, D&G, Hart, A.M. Homes, C.A. Homes, KC, Parkinson, Rondell and Thompson. The notices to the independents (including each Respondent) read as follows:

> In accordance with the prosisions of the National Labor Relations Act, as amended, and the provisions of Section XIX of our current agreement, we hereby give the required sixty day notification of our desire to change, modify or terminate the afore-mentioned agreement.

In accordance with the above section, we stand ready to meet with you within the next thirty days to outline the changes we feel are necessary.

If we have no response to this notice, we will assume it is your intention to abide by the outcome of negotiations between our Union and the Lumbermen's Association.

Thank you for an early reply.

Only one of the Respondents requested a conference to discuss Local 2020's proposals for a new contract. Kent Cross, President of Cross, telephoned M.N. Long, Financial Secretary of Local 2020, the two met on June 19 at Cross' office and Long went over each of Local 2020's proposed changes from the 1966-69 contracts, explaining each one. It was recognized that the proposals would undergo modification as negotiations between the S.D. Assn. and Local 2020 progressed (they were scheduled to commence the next day). Cross commented that he thought the wage proposals were too high and asked Long to keep him informed concerning developments in the S.D. Assn.-Local 2020

bargaining. Long agreed and from time to time thereafter telephoned Cross and kept him informed.

Sometime that same month, while Long was engaged in casual conversation with A. M. Homes, President of A. M. Homes, he told Homes that Local 2020 was seeking a wage increase of over 75 cents per hour over the term of the new contract; at that, in Long's words, "Mr. Homes almost flipped in the air, almost fell over, and from that point our trouble started."

Negotiations between the S. D. Assn. and Local 2020 ran through June and into July.

In the course of the negotiations John Maxwell, owner of a cabinetmaking shop and one of the S. F. Assn.'s negotiators, informed Long he had heard that several of the independents had signed an out-of-the-area contract and complained that he and other cabinetmakers among the S. D. Assn.'s membership would be placed at a competitive disadvantage if this was so.

By late July the S. D. Assn. submitted a substantial offer to Local 2020. Local

2020 took the offer to its membership and it was accepted on July 30 (a Wednesday).

That same date Long addressed a letter to each of the independents, including the nine Respondents, reminding them of the July 31 expiration of their agreements, advising them that Local 2020 wished to negotiate a separate, individual contract with each of them as it had in the past, and requesting that they meet with Local 2020 at 9:30 a.m. on August 2 (a Saturday) at the Carpenters' hall or contact Local 2020 for the purpose of setting a mutually satisfactory time, date and place for such negotiations.

Still on the same day, Frank Daluiso, Executive Vice President of the Southern California Association of Cabinet Manufacturers at Los Angeles, California (S.C. Assn.) addressed a letter to Dean Southerland, Chairman of the 12 Southern California Counties Mill Conference (S.C. Conf.) with a copy to Long of Local 2020 and to Daniel Johnston, a professional negotiator who had led the S.C. Conf. team in the 1968 negotiation of an S.C. Assn.-S.C. Conf. contract

for a term expiring July 31, 1971, stating that the Respondents (except C.A. Homes) had joined the S.C. Assn. and therefore automatically were covered by the S.C. Assn.-S.C. Conf. 1968-71 contract.[6/]

[6/] While Local 2020 affiliated with the S.C. Conf. when the Conf. was formed and negotiated its first contract with the S.C. Assn. for a term of 3 years expiring in 1968, it was a matter of accommodation inasmuch as none of the employers whose employees were represented for purposes of collective bargaining by Local 2020 were included either in the negotiations or the coverage of that contract. Local 2020 had no role in the administration of the contract and was prevailed upon to join in the notice terminating it by the representation this was necessary for an effective termination. Local 2020 did not participate in any way in the negotiations of the successor contract in 1968 between the S.C. Assn. and the S.C. Conf. The costs for Johnston's services as contract negotiator were distributed on a pro-rata basis among the S.C. Conf. affiliates who had collective bargaining relations with employers covered thereby. No charge was levied upon or paid by Local 2020, inasmuch as it did not have collective bargaining relations with any employers affected thereby. Shortly after the 1968 S.C. Assn.-S.C. Conf. negotiations were completed and the contract executed, Local 2020 received an inquiry from Respondent Parkinson about it and informed Parkinson it did not affect him. When Local 2020 began to ready its proposals (continued)

The next day (Thursday, July 31), Cross replied to Local 2020's July 30 request to meet with it for the purpose of negotiating a separate individual contract supplanting the previous one with a telegram advising Local 2020 that Cross had joined the S.C. Assn. on the previous day,[7] that this automatically placed Cross under the coverage of the S.C. Assn.-S.C. Conf. 1968-71

6/ (continued) for its 1969 negotiations with the S.D. Assn. and the independents (including the Respondents), it decided to resolve any ambiguities with regard to the S.C. Conference's right to bargain collectively on behalf of its members. Its Executive Board passed a resolution to recommend that Local 2020 withdraw from the S.C. Conf. The recommendation was adopted by membership vote on March 27. On or about March 31, Local 2020 advised Johnston of its action and was assured by Johnston that their withdrawal did not present any problem, inasmuch as no employer with collective bargaining relations with Local 2020 was affected thereby and Local 2020 was free to negotiate with the employers with whom it had such relations as it had in the past.

7/ The other Respondents (with the exception of C.A. Homes) tendered applications for membership in the S.C. Assn. between July 26-30.

contract and therefore there was nothing to negotiate about. On or about the same date, Cross by its counsel telephoned counsel for Local 2020 and stated Cross' willingness to meet with Local 2020 at any time to discuss the situation. The telegram was received the same day and was Local 2020's first notification that any of the Respondents actually had joined the S.C. Assn. and were claiming coverage under that agreement.[8/] The Daluiso letter notifying Local 2020 the balance of the Respondents had joined the S.C. Assn. and were making a similar contention apparently was received on Friday, August 1.

Many of the independents telephoned Local 2020 between July 31 and Saturday, August 2, to state their inability to attend the August 2 meeting requested in

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8/ The Respondents relied upon Section 12(a) of the 1968-71 S.C. Assn.-S.C. Conf. agreement reading:

> All Employers who are or who become regular members of the Southern California Association of Cabinet Manufacturers are parties to this Agreement and are entitled to the benefits hereof. . .

Long's July 30 letter and to arrange for another date. None of the Respondents other than Cross contacted Local 2020 to arrange a conference with Local 2020 for a date other than August 2.

About 7 or 8 independents met with Local 2020 on August 2 at the time requested. None of the Respondents appeared. Local 2020 explained the terms of the S.D. Assn.-Local 2020 settlement and requested that each of the independents accept similar terms and execute new individual, separate contracts embodying such terms titled "Interim Independent Mill & Cabinet" Agreements.[9/] The independents in

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9/ The proposed Interim Agreement provided for wage scales in the amounts and effective on the same dates as those negotiated with the S.D. Assn.; provided for the same changes in retirement contributions and vacation benefits; the same duration provision; but further provided for waiver of the no-strike, no-lockout and grievance-arbitration provisions of the previous agreement during the term of the interim agreement and further bargaining until all amendments to the prior agreement had been worked out and a complete and total agreement negotiated, and executed.

attendance and Local 2020 executed such contracts. As the meeting was breaking up, Messrs. Homes and Cross appeared. Homes signed one of the interim agreements and presented it to Leslie Parker, Secretary-Treasurer of the San Diego District Council of Carpenters, along with a document executed by Homes as agent for the S.C. Assn. on behalf of its Respondent members wherein Homes stated that he was signing the accompanying interim agreement as an agent of the S.C. Assn. on behalf of its Respondent members under protest. Parker refused to accept the two documents on this basis and advised Homes that Local 2020 would accept Homes' execution of an interim agreement on behalf of the Respondents only with the clear understanding that he was binding each as a separate, independent entity. Homes refused to execute the agreement on that basis. To make clear Local 2020's non-acceptance of the agreement in the form tendered, Parker destroyed the agreement proffered by Cross as agent for the S.C. Assn.

Commencing the following Monday (August 4) Local 2020 implemented its "no-contract,

no work" policy by striking all independents who had not signed a separate, independent interim agreement. By August 10, each Respondent and Local 2020 had executed separate, independent interim agreements. Cross advised Local 2020 by letter that it was signing the agreement under protest to avoid further economic losses occasioned by the strike and without waiving its position that the S.C. Assn.-S.C. Conf. 1968-71 contract governed the wages, rates of pay and other working conditions of its employees represented by Local 2020 and its right to seek a judicial determination of its rights to that effect. The other Respondents take a similar position, and all Respondents consistently have maintained this stance since. There hasn't been any bargaining between the Respondents and Local 2020 since the Respondents' execution thereof and no complete contracts have been negotiated.

C. Analysis and Concluding Findings

It is undisputed that prior to late July of 1969, each of the Respondents had recognized and bargained with Local 2020

as the representative of separate and independent units[10/] of their employees and executed individual agreements governing their wages, hours and working conditions. As conceded by the Respondents, such units are presumptively appropriate. Silver Lake Nursing Home, 178 NLRB No. 71; Green Construction Co., 133 NLRB 152; Appliance Supply Co., 127 NLRB 319; Metropolitan Homebuilders Assn., 119 NLRB 1184; Arden Farms, et al., 117 NLRB 318; etc.

10/ As noted heretofore, Respondents conceded in their answers to the complaints that production and maintenance units consisting of journeymen and cabinet makers, journeymen finishers, spray gun operators and mill and shop helpers, excluding all other employees, constituted separate units appropriate for collective bargaining purposes under Section 9 of the Act. They further stipulated that on various dates prior to their July 31, 1969 expiration, all but Rondell and C.A. Homes executed separate agreements recognizing Local 2020 as the exclusive representative of their employees within those units; that Rondell and C.A. Homes prior to July 31, 1966 executed similar agreements with Local 2020; and that since July 31, 1966 Local 2020 members employed at the premises of Rondell and C.A. Homes have been compensated and their working conditions governed by the terms of the 1966-69 agreements between the independents and (continued)

Local 2020 served timely, individual notices in 1969 upon each of the Respondents effectively terminating the agreements it had with seven of the Respondents and putting the other two Respondents on notice that it desired to negotiate agreements with them for a term commencing August 1, 1969 (the previous agreements expired July 31, 1969). No cross-notices were served on Local 2020 prior to the opening dates (June

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10/ (continued) Local 2020. It is undisputed that during the 1966-69 term of the various contracts between Local 2020 and the independents and thereafter, all nine Respondents recognized Local 2020 as the exclusive representative of their employees within the units heretofore described, discussed problems concerning the wages, hours and working conditions of the employees within such units with Local 2020, and otherwise accorded Local 2020 recognition as the exclusive representative of their employees within said units. The denial of Local 2020's exclusive representative status within the nine individual units contained in the Respondents' answers to the complaints were based upon their contentions that the separate unit entities were destroyed by their merger into the multi-employer unit encompassed by the S.C. Assn.-S.C. Conf. agreement, not on the basis Local 2020 did not at all times pertinent represent the employees within the units. Based on the foregoing, the Examiner finds and concludes that separate (continued)

1, 1969) of their respective agreements by any of the seven under contract, nor by the two who were not, of any desire to change the pre-existing nine separate units for bargaining purposes to a multi-employer unit.

The Board has accepted a multi-employer unit as appropriate for collective bargaining purposes when:

> "The inclusion of a particular employer in a multi-employer unit is based upon the mutual consent of the parties to such inclusion, as evidenced either by a bargaining history for such group of employers in a single unit, or by the express agreement of the parties to the inclusion of the individual

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10/ (continued) and independent production and maintenance employee units consisting of employees of each of the nine Respondents classified as journeymen millmen and cabinet makers, journeymen finishers, spray gun operators and mill and shop helpers, excluding all other employees, constitute units appropriate for collective bargaining purposes and that at all times pertinent Local 2020 has been and continues to be the exclusive representative of Respondents' employees within such units.

employers." Local Union 49, Sheet Metal Workers Assn., 122 NLRB 1192, 1194. (Emphasis added).

In this case, there is neither a history of multi-employer barbaining nor express agreement between the Respondents and Local 2020 for multi-employer bargaining; rather their past practice has been to bargain individually and separately and Local 2020 has unequivocally opposed bargaining on a multi-employer basis with the Respondents.

The question then arises as to whether, as here, an employer or a union, acting unilaterally may effectively change the character of the existing bargaining relationship.

The reports contain several cases where the Board and the courts have recognized the unilaterally exercised right of either an employer or a union to withdraw from a multi-employer bargaining unit and to establish or re-establish bargaining on a single employer basis and imposed a legal obligation upon both parties to bargain on such basis thereafter. (N.L.R.B. v. Sklar C.A. 6, 53 LRRM 2005, rev. 134 NLRB 1289; Detroit Newspaper Publishers Assn. et al v.

N.L.R.B., C.A. 6, 64 LRRM 2403 affg. 154 NLRB 1482; Publishers Assn. of New York City et al v. N.L.R.B., C.A. 2, 62 LRRM 2722, affg. 156 NLRB 210; etc.) Such right and obligation have been denied, however, when the attempted withdrawal was belated, without timely and adequate notice, equivocal or in bad faith, (N.L.R.B. v. Corbett Press, Inc., C.A. 2, 69 LRRM 2480 affg. 163 NLRB 154; N.L.R.B. v. Strong, C.A. 9, 65 LRRM 3012, affg. 152 NLRB 9; N.L.R.B. v. Tulsa Sheet Metal Works, Inc., C.A. 10, 63 LRRM 2217, affg. 149 NLRB 1487; N.L.R.B. v. Sheridan Creations, Inc., C.A. 2, 61 LRRM 2586, affg. 148 NLRB 1502 (Cert. den., 64 LRRM 2108); N.L.R.B. v. Jeffries Bank Note Co., C.A. 9, 46 LRRM 2919, affg. 124 NLRB 920; etc.)

The Board has been even more stringent in cases involving an attempt by one of the parties to unilaterally change the character of the bargaining relationship from a single-employer to a multi-employer unit basis, due to the presumption favoring preservation of single-employer units. For example, in United Fryer & Stillman, Inc., 139 NLRB 704, the union in question was party both

to a multi-employer agreement with an employer association covering a number of small meat packing plants in the Denver area as well as a separate, individual agreement with the Respondent. During the term of the two agreements, the Respondent joined the employer association and signed a power of attorney authorizing the association to represent it for collective bargaining purposes. The union was not notified of this action at that time. When the union subsequently served timely notice under its agreement with the Respondent signifying its desire to negotiate a new agreement, the association responded with a communication notifying the union that the Respondent had joined the association and that the association would bargain with the union on behalf of the Respondent as part of the multi-employer unit and agreement coverage. The union advised the association it did not recognize the Respondent as part of the association for collective bargaining purposes and renewed its request for separate, independent bargaining on the pre-existing single-employer basis, stating that it had no

objection to the association acting as the Respondents' agent in negotiations on such basis. The association maintained its position. The Board adopted the Trial Examiner's recommended decision finding that by so doing the Respondent failed to bargain in good faith and thereby violated Section 8(a)(5) and (1) of the Act, inasmuch as (1) a single-employer unit is presumptively appropriate, (2) previous bargaining was on a single-employer basis, (3) the association's notice to the union of a desire to negotiate on a multi-employer basis was untimely in that it was served on the union after the union had served a timely request upon the Respondent to bargain on a single-employer basis for a renewal of their existing separate, independent agreement, and (4) the union refused to consent to the change in the bargaining relationship desired by the Respondent. To a similar effect, Moveable Partitions, Inc., 175 NLRB No. 149; United Association etc., (Reynolds El. & Eng. Co.), 171 NLRB No. 176; U.S. Pillow Corp., 137 NLRB 584.

Applying the rationale of the cases

cited above, the Respondents' unilateral attempt to change the character of the collective bargaining relations between them and Local 2020 from sirgle-employer bargaining to multi-employer bargaining is invalid and consequently their insistence upon bargaining with Local 2020 through the S.C. Assn. as a part of the multi-employer group covered by the S.C. Assn.-S.C. Conf. agreement was and is violative of Section 8(a)(5) and (1) of the Act. It is undisputed that eight of the nine Respondents joined the S.C. Association (C.A. Homes did not join it at all) and authorized it to represent them for collective bargaining purposes after their receipt of Local 2020's requests addressed to each of them separately for single-employer bargaining, in accordance with previous practice, and after Cross (and A.M. Homes, with regard to wages) had discussed Local 2020's proposals for new agreements. It reasonably may be presumed that the balance of the Respondents were informed of Local 2020's proposals and the S.D. Association's July offer. The Respondents' motive for joining the S.C. Assn. and attempting to place themselves

under the coverage of the 1968-71 S.C. Assn.-S.C. Conf. agreement is readily apparent; the S.C. cabinetmaker rate is $4.145, effective July 1, 1969, $4.345, effective July 1, 1970, with a contract expiration date of June 30, 1971; the S.D. cabinetmaker rate is $4.43, effective August 1, 1969, $4.81, effective August 1, 1970, $5.18, effective August 1, 1971, with a contract expiration date of July 31, 1972. The Respondents would be required to pay increases of only 3-1/2 cents in 1969 (their cabinetmaker rate, effective August 1, 1968, was $4.11), and 20 cents in 1970 under the S.C. Assn. agreement, as contrasted with increases of 32 cents in 1969, 38 cents in 1970 and 37 cents in 1971 under the S.D. agreement (assuming Local 2020 was successful in securing their agreement to the S.D. Assn. rate adjustments). Obviously Respondents sought to avoid single-employer bargaining with Local 2020 over its proposal to accept the S.D. Assn.-Local 2020 $1.07 wage settlement for the 1969-72 term and instead obligate themselves only for 23-1/2 cents for the following 2 years with every prospect for an increase for the 3rd year

of far less than 83-1/2 cents (the difference between the total $1.07 3-year settlement of the S.D. Assn. and the 1969 and 1970 S.C. Assn. rate increases). It is further undisputed that the eight Respondents who joined the S.C. Assn. and empowered it to represent them did not notify Local 2020 of their action until after Local 2020 had served its requests for single-employer bargaining upon them and reached agreement with the S.D. Assn., and failed to secure Local 2020's consent to a change in their previous collective bargaining pattern.

With regard to the latter factor (consent), the Examiner rejects the Respondents' contention that paragraph 12(a) (see Fn. 8) constitutes Local 2020's consent to Respondents' inclusion within the S.C. Assn. multi-employer unit for collective bargaining inasmuch as knowing and express consent is required, and is absent here, Local 2020 did not participate in the negotiation of the 1968-71 S.C. Assn.-S.C. Conf. agreement, Local 2020 withdrew from the S.C. Conf. perior to the date the Respondents applied for membership in the S.C. Assn. (cf.

U.S. Pillow Corp., 137 NLRB 584 and United Association etc. (Reynolds El. & Eng. Co.), 171 NLRB No. 176).

Insofar as Cross' contention that it at no time refused to bargain inasmuch as it informed Local 2020 of its willingness to meet and discuss matters with Local 2020 at any time, it also by its President on August 2 and by its Vice President and Counsel on August 7 and continuously since those dates has consistently maintained that it is not required to bargain individually and independently on a single-employer basis with Local 2020 and that the wages, hours and working conditions of its employees in the appropriate unit hereinbefore specified are governed by the 1968-71 S.C. Assn.-S.C. Conf. agreement. A finding has been entered above that by its continued adherence to this position Cross has violated the Act; its professed willingness to discuss this unlawful position does not excuse the violation.

C.A. Homes contends that it has no duty to bargain with Local 2020 because it has not employed any members of Local 2020 at any time pertinent. It is not disputed

that C.A. Homes is a corporation operating a business in a building immediately adjacent to a building in which A.M. Homes, a separate corporation, conducts a separate business. At one time in the recent past, C.A. Homes was party to a "Mill & Cabinet" agreement with Local 2020 at the same time A.M. Homes was party to a "Stock Mill" agreement. Continuously since the expiration of the C.A. Homes-Local 2020 agreement, Local 2020 has continued to dispatch its members to the premises occupied by C.A. Homes for work under the supervision and direction of C.A. Homes. In recent times, the carpenters so employed have been paid by checks issued by A.M. Homes. On these facts, the Examiner finds and concludes that while paid by A.M. Homes, at times pertinent to this cause members of Local 2020 in job classifications within the appropriate unit hereinabove specified have been and continue to be employed by C.A. Homes at its place of business in work which it conducts under its supervision and control and therefore it had at times pertinent and continues to have a duty to bargain collectively with Local 2020

concerning the wages, hours and working conditions of such employees and, if it has reached and/or reaches an agreement with Local 2020 with regard thereto, to comply with or execute same.

Conclusions of Law

1. The Respondents were employers engaged in commerce in a business affecting commerce and Local 2020 was a labor organization within the meaning of Section 2(5) of the Act at all times pertinent to this proceeding.

2. Separate units at each Respondent's premises consisting of employees classified as journeymen millmen and cabinet makers, journeymen finishers, spray gun operators and mill and shop helpers, excluding all other employees, constitute units appropriate for collective bargaining purposes within the meaning of Section 9 of the Act.

3. Local 2020 has been the exclusive representative of Respondents' employees in the separate, appropriate units specified in No. 2 above for purposes of collective bargaining at the times pertinent to this proceeding.

4. By Cross' insistence since July 31, 1969 and all the Respondents' insistence since August 2, 1969 that the Respondents were included within a multi-employer unit covered by a 1968-71 agreement between the S.C. Assn. and the S.C. Conf. for collective bargaining purposes and therefore not obliged to bargain collectively with Local 2020 on an individual, spearate, single-employer basis with regard to the wages, hours and working conditions of their employees within the units specified in No. 2 above, the Respondents have failed and refused to bargain in good faith in violation of Section 8(a)(5) and (1) of the Act.

5. The aforesaid unfair labor practices occurring in connection with Respondents' operations heretofore described have a close, intimate and substantial relation to trade, traffic and commerce among the several states and, unless corrected, will tend to lead to labor disputes burdening and obstructing commerce and the free flow thereof and therefore constitute unfair labor practices affecting commerce within the meaning of the Act.

The Remedy

Having found that the Respondents a engaged in unfair labor practices in violation of Section 8(a)(5) and (1) of the Act, the Examiner shall recommend that they cease and desist therefrom and take affirmative actions designed to effectuate the Act.

RECOMMENDED ORDER

On the basis of the foregoing findings of fact and conclusions of law and pursuant to Section 10(c) of the Act, the Examiner recommends that each of the nine Respondents, their officer, agents, successors and assigns, be ordered to:

1. Cease and desist from asserting that the wages, hours and working conditions of their employees classified as journeymen millmen and cabinet makers, journeymen finishers, spray gun operators and mill and shop helpers are governed by the 1968-71 agreement between the S.C. Assn. and S.C. Conf. or that the separate identity of units for collective bargaining purposes consisting of employees within such job classifications has been destroyed by

merger into a single multi-employer bargaining unit covered by that agreement;

2. Cease and desist from asserting that any individual, separate agreement or understanding reached between any of the Respondents and Local 2020 concerning the wages, hours and working conditions of employees within such units is unlawful, void or otherwise enforceable by virtue of any conflict between such agreement and the 1968-71 S.C. Assn.-S.C. Conf. agreement;

3. Meet and bargain with Local 2020 at its request over the wages, hours and working conditions of employees within the units hereinabove specified and, when and if full and final settlement of all issues is reached, reduce such agreements to writing and execute same.

4. Post on each Respondent's premises at places where notices to employees are customarily posted copies of the notice attached hereto and marked "Appendix." 11/

11/ In the event no exceptions are filed as provided by Section 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, recommendations, and Recommended Order (continued)

Copies of such notices on forms furnished by the Regional Director for the 21st Region shall be signed by an authorized representative of each Respondent and posted immediately upon receipt thereof and maintained for a period of 60 days thereafter. Reasonable steps shall be taken to insure that the notices are not altered, defaced or covered by other material.

5. Notify the Regional Director for Region 21 in writing, within 20 days from the date of this Decision, what steps each

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11/ (continued) herein shall, as provided in Section 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and order, and all objections thereto shall be deemed waived for all purposes. In the event that the Board's Order is enforced by a judgment of a United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall be changed to read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL RELATIONS BOARD."

Respondent has taken to comply herewith.[12/]

Dated: April 6, 1970.

/s/ George Christensen

George Christensen
Trial Examiner

[12/] In the event that this Recommended Order is adopted by the Board, this provision shall be modified to read: "Notify the Regional Director for Region 21, in writing, within 10 days from the date of this Order, what steps it has taken to comply herewith."